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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ANNE BRYANT, ELLEN BERNFELD,  
and GLORYVISION, LTD.,

Doc. No. 07-Civ-3050 (CLB)

Plaintiffs,

-against-

EUROPADISK, LTD., MEDIA RIGHT  
PRODUCTIONS, INC., VERY COOL MEDIA,  
INC., DOUGLAS MAXWELL, THE ORCHARD  
ENTERPRISES, INC. and RUSSELL J.  
PALLADINO,

Defendants.

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**PLAINTIFFS'  
COUNTER STATEMENT OF  
MATERIAL FACTS IN  
OPPOSITION TO  
DEFENDANT'S RULE 56.1  
STATEMENT**

Plaintiffs, for their counter-statement of material facts,  
dispute the following facts alleged by Defendants:

**Defendants' Statement:**

10. "Plaintiff, Gloryvision, Ltd. ("Gloryvision") and Media Right, entered into a music representation agreement (the "Gloryvision Agreement,") in February of 2000. See Gloryvision Agreement set forth in Defendants' Exhibit 1." (emphasis added)

**Counter-Statement:**

1. The Agreement was not a "music" representation agreement but a "product" representation agreement. Plaintiff, Ellen Bernfeld, on behalf of Gloryvision, and Media Right, entered into a product representation agreement for "Media Right Productions...to act as agent and representative, on a non-exclusive basis, for the CDs and tapes entitled 'Songs For Dogs' and 'Songs For Cats', and 'Songs For Dogs CD and Book.'" See Gloryvision Agreement set forth in Defendants' Exhibit 1 at ¶1.

**Defendants' Statement:**

11. The Gloryvision Agreement authorized Media Right to "act as agent and representative" of Gloryvision with respect to Gloryvision's recordings entitled "Songs for Dogs and "Songs for Cats" (the "Gloryvision Recordings"). See Maxwell Deposition at ¶¶2-5, p.76; ¶¶8-10, p.77; See Bernfeld Deposition at ¶¶20-23, p.77; §§2-3 pf the Gloryvision Agreement.

**Counter-Statement:**

2. Plaintiff, Ellen Bernfeld, on behalf of Gloryvision, and Media Right, entered into a product representation agreement for "Media Right Productions...to act as agent and representative, on a non-exclusive basis, **for the CDs and tapes entitled** 'Songs For Dogs' and 'Songs For Cats', and 'Songs For Dogs CD and Book.'" See Gloryvision Agreement set forth in Defendants' Exhibit 1 at

¶1. (*emphasis added*) .

**Defendants' Statement:**

17. Pursuant to the Gloryvision Agreement, Media Right marketed the Gloryvision Recordings by reaching out to pet-related retailers, such as Pets.com, and posted marketing materials for the Gloryvision Recordings on the Media Right website. See Maxwell Affidavit at ¶¶21 and Gloryvision Agreement set forth in Defendants' Exhibit 1.

**Counter-Statement:**

3. Pursuant to the Gloryvision Agreement, Media Right marketed the Gloryvision Recordings by reaching out to pet related retailers, such as Internet site Pets.com, and posted marketing materials for the Gloryvision Recordings on the Media Right website to promote the sales of the CDs and tapes entitled "Songs For Dogs" and "Songs For Cats." See Maxwell Affidavit at ¶¶21 and Gloryvision Agreement set forth in Defendants' Exhibit 1.

**Defendants' Statement:**

19. Mr. Maxwell believed that the Gloryvision Agreement authorized him to sell and distribute the Gloryvision Recordings pursuant to The Orchard Agreement. See Maxwell Affidavit at ¶¶28.

**Counter-Statement:**

4. Mr. Maxwell's erroneous beliefs are not an undisputed fact and are not accepted by Plaintiffs.

**Defendants' Statement:**

32. Media Right continued to perform under the Gloryvision Agreement under the assumption that it was still in effect. See Maxwell Affidavit at ¶¶25.

**Counter-Statement:**

5. The Gloryvision Agreement was breached even before it was signed by Gloryvision and was continuously breached until all digital copies of the "Songs For Dogs" and "Songs For Cats" ceased to be digitally distributed by Defendants. On February 1, 2000, twenty three (23) days before the effective date of the Media Right/Gloryvision agreement, and without authority Media Right entered into an agreement with The Orchard "...to distribute the aforementioned copyrighted musical recordings and associated artwork through any and all means and media now known or ....." See Exhibit "A" annexed to the Monaghan Declaration; see also Testimony of Jason Pascal, Corporate Counsel for The Orchard at Exhibit "E" at page 41:20-25. Moreover, Plaintiffs have never received any payment from Media Right or The Orchard for any sales. See Declaration of Anne Bryant at ¶25; see also Declaration of Ellen Bernfeld at ¶23. Plaintiffs have never received any statements or accountings from Media Right or The Orchard regarding any sales of Songs for Dogs/Songs for Cats except as produced in this litigation. See Declaration of Anne Bryant at ¶25; see also Declaration of Ellen Bernfeld at ¶23. Furthermore, if Media Right required additional copies to sell and/or distribute, they were to

request additional copies from Gloryvision. See Exhibit "A" annexed to the Bryant Declaration.

**Defendants' Statement:**

36. Mr. Maxwell has never sought to take credit for the Gloryvision Recordings, nor represented to anyone that Media Right owned the copyrights in the Gloryvision Recordings. See Maxwell Affidavit at ¶¶40,41.

**Counter-Statement:**

6. The Exhibits presented by Plaintiffs speak for themselves as to representations made by Media Right as to the copyrights and authorship of "Songs For Cats" and "Songs For Dogs." See Exhibits "C" - "F" annexed to Plaintiff's Motion for Summary Judgment.

**Defendants' Statement:**

37. The Orchard has never sought to take credit for the Gloryvision Recordings, nor represented to anyone that The Orchard owned the copyrights in the Gloryvision Recordings. See Pascal Affidavit at ¶¶25.

**Counter-Statement:**

7. The Exhibits presented by Plaintiffs speak for themselves as to representations made by The Orchard as to the copyrights and authorship of "Songs For Cats" and "Songs For Dogs." See Exhibits "C" - "F" annexed to Plaintiff's Motion for Summary Judgment.

**Defendants' Statement:**

40. With respect to copyrights in the Gloryvision Recordings, Plaintiffs own fourteen (14) potentially relevant registrations,

as follows: (i) nine (9) Performing Arts registrations of separate songs from "Songs for Cats"; (ii) three (3) Sound Recording registrations for both albums and four (4) "Songs for Dogs" singles; and (iii) two (2) Visual Arts registrations for CD artwork of the two CDs. See Plaintiffs' copyright registrations forth in Defendants' Exhibit 9.

**Counter-Statement:**

8. All of the subject artwork and musical recordings are the subject of valid registered and common law copyrights in effect at the time of the copyright infringement. See Exhibit "B" annexed to Plaintiffs' Motion for Summary Judgment.

DATED: Montvale, New Jersey  
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